

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-648

January 12, 1999

CONSUMERS MAINE WATER COMPANY  
Request For Approval of  
Reorganization Due To Merger  
With Philadelphia Suburban  
Corporation

ORDER APPROVING  
STIPULATION

---

WELCH, Chairman; NUGENT and DIAMOND Commissioners

---

**I. Summary**

In this Order we approve the Stipulation filed on December 23, 1998, on behalf of Consumers Maine Water Company (CMWC), Philadelphia Suburban Corporation (PSC), the Public Advocate and the Town of Freeport. In addition, we approve the reorganization of CMWC through the merger of CMWC's parent, Consumers Water Company (CWC), and PSC on the terms set forth in the Stipulation. The terms of the Stipulation are discussed below.

**II. Background**

On August 18, 1998, CMWC and PSC filed a joint Application seeking approval under 35-A M.R.S.A. § 708 of the reorganization of CMWC through the merger of CWC into Consumers Acquisition Company (Acquisition), a wholly-owned subsidiary of PSC. Pursuant to the proposed transaction, CMWC will become a subsidiary of PSC. PSC is a Pennsylvania corporation and is the holding company of Philadelphia Suburban Water Company (PSW), a Pennsylvania water utility.

Notice of the Proceeding was issued on September 18, 1998 and a prehearing conference in this matter was held on October 20, 1998. The Public Advocate, the City of Rockland and the Towns of Millinocket, Freeport, Camden and Rockport intervened in this case. The Joint Applicants filed direct testimony on November 5, 1998. The Public Advocate and the Commission's Advisory Staff (Advisors) issued data requests to which the Joint Applicants responded. The Public Advocate, the Joint Applicants and the Advisors participated in technical conferences held on November 12 and November 19, 1998. Those present at the conferences discussed the issues in the case and the possibility of reaching a stipulated resolution. Following the November 19, 1998 conference, the parties negotiated the issues in the case. After a telephone conference on December 22, 1998, in which the Advisors and all parties except the Town of Millinocket participated, CMWC filed a stipulation on behalf of the Joint Applicants, the Public Advocate and the Town of Freeport. The

City of Rockland and the Town of Rockport also signed the Stipulation. The Towns of Millinocket and Camden did not file objections to the Stipulation.

### **III. Standard of Review**

The proposed merger of CMWC and PSC constitutes a reorganization of CMWC under 35-A M.R.S.A. § 708(1)(A). Section 708 of Title 35-A requires Commission approval of any reorganization of a public utility. Under that section, the Commission may approve a reorganization only if the applicant establishes that the reorganization "is consistent with the interests of the utility's ratepayers and investors." 35-A M.R.S.A. § 708(1)(A). Section 708 further states that in granting its approval for a reorganization, the Commission shall impose such terms, conditions and requirements as are necessary to protect the interests of ratepayers, including, in relevant part, provisions which ensure:

- ♦ that the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- ♦ that the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- ♦ that the utility's credit is not impaired or adversely affected; and
- ♦ that neither ratepayers nor investors are adversely affected by the reorganization.

35-A M.R.S.A. § 708(2)(A).

In previous cases, we have found that this standard is met if the rates and service to customers of the utility will not be adversely affected by the transaction. *Bangor Hydro-Electric Company and Stonington and Deer Isle Power Company, Joint Application to Merge Property, Franchises and Permits and for Authority to Discontinue Service*, Docket No. 87-109, Order Approving Stipulation and Merger (Nov. 10, 1987) and *Greenville, Millinocket and Skowhegan Water Company, Application for Authorization to Sell Utility Property to Wanakah Water Company and to Discontinue Service*, Docket No. 92-250, Order Approving Stipulation (Dec. 15, 1992). In *New England Telephone & Telegraph Company and NYNEX Corporation, Proposed Joint Petition*

*for Reorganization Intended to Effect the Merger with Bell Atlantic Corporation*, Docket No. 96-388, Order (Part II) (Feb. 6, 1998), we interpreted the standard as requiring that the benefits of the merger outweigh the detriments of the merger. We stated that "to find that the merger is consistent with the interest of ratepayers (i.e. that the benefits equal or outweigh the detriments), it is essential that ratepayers realize at least some portion of the benefits of the merger." *Id.* at 9.

In addition, we have established criteria for approving stipulations. In *Consumers Maine Water Company, Proposed General Rate Increase of Bucksport and Hartland Divisions*, Docket No. 96-739, Order Approving Stipulation (July 3, 1997), we summarized these criteria:

- 1) whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) whether the process that led to the stipulation was fair to all parties; and
- 3) whether the stipulated result is reasonable and is not contrary to legislative mandate.<sup>1</sup>

*Id.* at 2 (citations omitted).

#### IV. Discussion

The Joint Applicants have testified to a number of prospective benefits of the merger. CMWC has stated that a larger company<sup>2</sup> with greater buying power in many areas will benefit CMWC. Specifically, PSC's greater purchasing power is expected to generate savings in the costs of chemicals, electricity, property and liability insurance and employee benefits.

In addition to expected savings from the merger, however, are costs related to the merger transaction. Most of the provisions in the Stipulation relate to these merger costs, which

---

<sup>1</sup> In addition, we recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *Id.*

<sup>2</sup> The PSC has testified that the merged entity will be the second largest investor-owned water utility system in the country.

include investment advisor costs, legal, accounting and filing fees and severance and retention expenses. The Stipulation states the parties' agreement that *for accounting purposes*, merger costs<sup>3</sup> incurred by CMWC directly or allocated to CMWC may be recorded as a deferred debit and amortized for a period of no greater than 10 years beginning with the consummation of the merger at a rate of no less than one-tenth of the costs per year.<sup>4</sup>

The issue of whether CMWC may use savings in operation and maintenance expenses resulting from the merger to offset merger costs is deferred to a future ratemaking proceeding except that a number of limitations are placed on CMWC's ability to use such savings to offset merger costs. These limitations include provisions that: (1) cap the total amount of the merger costs that will be allocated to CMWC; (2) require CMWC to demonstrate that the annual test-year savings generated by the merger for a division are at least equal to the allowable test-year merger expense for that division in order for CMWC to recover that division's share of the allowable merger expense in the rate year; (3) require that in any rate case, CMWC will not seek to recover more than one-tenth of the merger costs in any test year, even if for accounting purposes the company chooses to amortize the costs more rapidly; (4) require that once 100% of CMWC's allocated share of merger costs have been amortized, no rate recovery will be sought; (5) preclude adding the deferred merger costs to rate base for ratemaking purposes and preclude CMWC from earning a rate of return on those costs, and (6) require that if CMWC is still amortizing the merger costs during a rate effective period, CMWC will not challenge the "cluster group" approach to management service fees applied by the Commission in Docket No. 93-145.<sup>5</sup>

---

<sup>3</sup> The Joint Applicants agree that total merger costs will not exceed \$7,702,950 and no more than \$245,000 of the total merger costs will be allocated to CMWC.

<sup>4</sup> CMWC may amortize more than one-tenth of the merger costs in any given year.

<sup>5</sup> Under the "cluster group" methodology, rate recovery of management fees charged to the various divisions from the parent company or CMWC are capped to reflect an average of managerial costs for a group of comparable water utilities. *Camden and Rockland, Maine and Wanaqua Water Companies, Re: Proposed Increase in Rates*, Docket No. 93-145, Order (Part II) at 67-77. CMWC stated at a technical conference that the merger costs would fall into the same accounts that are subject to the "cluster group" methodology for rate recovery of management fees and has testified that the utilization of the management fee methodology

The Stipulation provides the following additional ratepayer protections or benefits:

- expected savings in capital costs and possible savings in reduced cost of capital will be flowed through to ratepayers on a division by division basis;
- for a period of three years following consummation of the proposed merger, CMWC will not seek to include in rates any amount of management service fees in excess of the level of management service charges incurred by the CMWC divisions in 1997;
- ratepayers will be held harmless for negative consequences to CMWC's cost of capital, cash flows, financial indicators and financing costs flowing from the merger; and
- CMWC will remain an active, operating Maine utility, managed by incumbent local management, will continue its practice of maintaining separate books and records by division, and each CMWC division will continue to be regulated by the Commission on a stand alone basis.

The Stipulation states the signatories' agreement that, based on the terms and condition presented in the Stipulation, the reorganization of CMWC through the merger of CWC and PSC should be approved and the Commission should authorize Vivendi,<sup>6</sup> which currently owns 23% of CWC and 14% of PSC and will, after the merger, own approximately 16% of the merged entity, to acquire up to 19.9% of the common stock of PSC.<sup>7</sup>

will result in no recovery of the merger costs as long as total management costs are greater than the cluster group.

<sup>6</sup> The Joint Applications state that Vivendi, formerly Compagnie Generale des Eaux, is the largest water company in the world. Vivendi's headquarters are located in Paris, France.

<sup>7</sup> In addition, the Stipulation states the signatories' agreement that the limited section 708 exemption granted to Consumers Water Company by the Commission in Docket No. 85-29 (as amended or modified from time to time, but subject to the same conditions outlined in the original order) is applicable to PSC, as successor in interest to Consumers Water Company, and all of PSC's subsidiaries or related entities which constitute affiliated interests of Consumers Maine Water Company. The Order in Docket No. 85-29 grants an exemption, subject to a number of conditions, to Consumers Water Company from the requirement of

We find that, based on the terms set forth in the Stipulation, the merger is consistent with the interests of ratepayers and shareholders. In addition, we find that the Stipulation is reasonable, represents the views of ratepayers (through the Public Advocate and some of the town intervenors) and the utility, is in the public interest, and that the process leading to the stipulation provided a fair opportunity for participation in the negotiation process. Accordingly, we approve the Stipulation and the reorganization of CMWC through the merger of CWC and PSC as discussed herein and set forth more fully in the Stipulation.

Accordingly, we

O R D E R

1. That the Stipulation filed on December 23, 1998 and attached hereto as Appendix A is hereby approved;
2. That the reorganization of Consumers Maine Water Company through the merger of Consumers Water Company and Philadelphia Suburban Corporation is hereby approved consistent with the terms of the Stipulation;
3. That, to the extent required by 35-A M.R.S.A. § 708, Viviendi is authorized to acquire up to 19.99% of the common stock of PSC; and
4. That the current management services agreement between Consumers Maine Water Company and Consumers Water Company may be assigned to Consumers Acquisition Company.

Dated at Augusta, Maine this 12th day of January, 1999.

BY ORDER OF THE COMMISSION

---

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

---

approval for reorganizations which do not directly involve its  
Maine water utility subsidiaries.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.